

of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.” for “man-year constraint or limitation.”

Subsec. (b)(2). Pub. L. 104-106, §1031(2), substituted “any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees” for “any end-strength”.

Subsec. (c)(1). Pub. L. 104-201, §1603(1), inserted “, the Major Range and Test Facility Base,” after “industrial-type activities”.

Subsec. (d). Pub. L. 104-106, §1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104-201, §1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102-190 substituted “department and (2)” for “department, (2)” and struck out “, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year” at end of first sentence.

1986—Pub. L. 99-661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99-433 renumbered section 140b of this title as this section.

### § 129a. General policy for total force management

(a) **POLICIES AND PROCEDURES.**—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) **RISK MITIGATION OVER COST.**—In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces (as identified pursuant to section 118b<sup>1</sup> of this title) takes precedence over cost.

(c) **DELEGATION OF RESPONSIBILITIES.**—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.

(2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.

(3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).

(4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations

from such policies and procedures that are recommended in the budget.

(d) **USE OF PLAN, INVENTORY, AND LIST.**—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:

(1) The civilian strategic workforce plan (required by section 115b<sup>1</sup> of this title).

(2) The civilian positions master plan (required by section 1597(c) of this title).

(3) The inventory of contracts for services required by section 2330a(c) of this title.

(4) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note).

(e) **CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.**— If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—

(1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and

(2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).

(f) **CONSTRUCTION WITH OTHER REQUIREMENTS.**—Nothing in this title may be construed as authorizing—

(1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;

(2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;

(3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—

(A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and

(B) there is adequate Government oversight of contractor personnel performing such functions;

(4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or

(5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).

(g) **PERFORMANCE OF CIVILIAN FUNCTIONS BY MILITARY PERSONNEL.**—(1) Functions performed by civilian personnel should not be performed by military personnel except—

<sup>1</sup> See References in Text note below.

(A) if the Secretary of the military department concerned determines in writing based on mission requirements that the performance of such functions by military personnel, including a permanent conversion of such functions to performance by military personnel, is cost-effective or required by a mission; or

(B) if the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress, in which case such functions may not be performed by military personnel for a period in excess of one year.

(2) In determining the workforce mix between civilian and military personnel, the Secretary of a military department shall reserve military personnel for the performance of the functions that, in the estimation of the Secretary, are required to be performed by military personnel in order to achieve national defense goals or in order to enable the proper functioning of the military department. In making workforce decisions, the Secretary shall account for the relative budgetary impact of military versus civilian personnel in determining the functions required to be performed by military personnel.

(Added Pub. L. 101-510, div. A, title XIV, §1483(b)(2), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 112-81, div. A, title IX, §931(a), Dec. 31, 2011, 125 Stat. 1541; Pub. L. 114-328, div. A, title IX, §914, Dec. 23, 2016, 130 Stat. 2350.)

#### REFERENCES IN TEXT

Section 118b of this title, referred to in subsec. (b), was repealed by Pub. L. 113-291, div. A, title X, §1072(b)(1), Dec. 19, 2014, 128 Stat. 3516.

Section 115b of this title, referred to in subsec. (d)(1), was repealed by Pub. L. 114-328, div. A, title XI, §1102(a), Dec. 23, 2016, 130 Stat. 2444.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101-510, §1483(a).

#### AMENDMENTS

2016—Subsec. (g). Pub. L. 114-328 added subsec. (g).

2011—Pub. L. 112-81 amended section generally. Prior to amendment, text read as follows: “The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

“(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

“(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.”

#### STRATEGIC POLICY FOR THE RETROGRADE, RECONSTITUTION, AND REPLACEMENT OF OPERATING FORCES USED TO SUPPORT OVERSEAS CONTINGENCY OPERATIONS

Pub. L. 113-66, div. A, title III, §324, Dec. 26, 2013, 127 Stat. 733, provided that:

“(a) ESTABLISHMENT OF POLICY.—

“(1) IN GENERAL.—The Secretary of Defense shall establish a policy setting forth the programs and priorities of the Department of Defense for the retrograde, reconstitution, and replacement of units and mate-

riel used to support overseas contingency operations. The policy shall take into account national security threats, the requirements of the combatant commands, the current readiness of the operating forces of the military departments, and risk associated with strategic depth and the time necessary to reestablish required personnel, equipment, and training readiness in such operating forces.

“(2) ELEMENTS.—The policy required under paragraph (1) shall include the following elements:

“(A) Establishment and assignment of responsibilities and authorities within the Department for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

“(B) Guidance concerning priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

“(C) Oversight reporting requirements and metrics for the evaluation of Department of Defense and military department progress on restoring the readiness of redeployed operating forces in accordance with the policy required under paragraph (1).

“(D) A framework for joint departmental reviews of military services’ annual budgets proposed for retrograde, reconstitution, or replacement activities, including an assessment of the strategic and operational risk assumed by the proposed levels of investment across the Department of Defense.

“(b) IMPLEMENTATION PLAN.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of the policy required under this section.

“(2) ELEMENTS.—The implementation plan required under paragraph (1) shall include the following elements:

“(A) The assignment of responsibilities and authorities for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

“(B) Establishment of priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

“(C) A description of how the plan will be implemented, including a schedule with milestones to meet the goals of the plan.

“(D) An estimate of the resources by military service and by year required to implement the plan, including an assessment of the risks assumed in the plan.

“(3) UPDATES.—Not later than one year after submitting the plan required under paragraph (1), and annually thereafter for two years, the Secretary of Defense shall submit to the congressional defense committees an update on progress toward meeting the goals of the plan.

“(c) COMPTROLLER GENERAL REPORT.—Not later than 120 days after the date of the enactment of this Act, and annually after the submittal of each update to the implementation plan under subsection (b), the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the policy required by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and progress made toward meeting the goals of the plan and including any

additional information relating to the policy and plan that the Comptroller General determines appropriate.”

SAVINGS TO BE ACHIEVED IN CIVILIAN PERSONNEL WORKFORCE AND SERVICE CONTRACTOR WORKFORCE OF THE DEPARTMENT OF DEFENSE

Pub. L. 112-239, div. A, title IX, §955, Jan. 2, 2013, 126 Stat. 1896, which related to efficiencies plan for the civilian personnel workforce and service contractor workforce of the Department of Defense, requiring specific savings, excluding certain expenses, setting reporting requirements, limiting transfers of functions, recommending application of certain funds saved to transition assistance for personnel separated from the Armed Forces, and providing definition of “service contractor workforce”, was repealed by Pub. L. 114-328, div. A, title IX, §915, Dec. 23, 2016, 130 Stat. 2350.

CONVERSION OF MILITARY POSITIONS TO CIVILIAN POSITIONS

Pub. L. 104-106, div. A, title X, §1032, Feb. 10, 1996, 110 Stat. 429, as amended by Pub. L. 104-201, div. A, title XVI, §1601, Sept. 23, 1996, 110 Stat. 2734, directed Secretary of Defense, by Sept. 30, 1996, to convert at least 3,000 military positions to civilian positions and, not later than Mar. 31, 1996, submit to Congress a plan for the implementation of conversion.

PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED

Pub. L. 104-61, title VIII, §8031, Dec. 1, 1995, 109 Stat. 658, provided that: “None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103-335, title VIII, §8036, Sept. 30, 1994, 108 Stat. 2626.

Pub. L. 103-139, title VIII, §8040, Nov. 11, 1993, 107 Stat. 1449.

Pub. L. 102-396, title IX, §9053, Oct. 6, 1992, 106 Stat. 1914.

Pub. L. 102-172, title VIII, §8055, Nov. 26, 1991, 105 Stat. 1184.

Pub. L. 101-511, title VIII, §8063, Nov. 5, 1990, 104 Stat. 1888.

Pub. L. 101-165, title IX, §9085, Nov. 21, 1989, 103 Stat. 1147.

Pub. L. 100-463, title VIII, §8079, Oct. 1, 1988, 102 Stat. 2270-30.

Pub. L. 100-202, §101(b) [title VIII, §8105], Dec. 22, 1987, 101 Stat. 1329-43, 1329-81.

**§ 129b. Authority to procure personal services**

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Sec-

retary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) REGULATIONS.—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(d) ADDITIONAL AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts if the personal services—

(A) are to be provided by individuals outside the United States, regardless of their nationality, and are determined by the Secretary to be necessary and appropriate for supporting the activities and programs of the Department of Defense outside the United States;

(B) directly support the mission of a defense intelligence component or counter-intelligence organization of the Department of Defense; or

(C) directly support the mission of the special operations command of the Department of Defense.

(2) The contracting officer for a personal services contract under this subsection shall be responsible for ensuring that—

(A) the services to be procured are urgent or unique; and

(B) it would not be practicable for the Department to obtain such services by other means.

(3) The requirements of section 3109 of title 5 shall not apply to a contract entered into under this subsection.

(Added Pub. L. 101-510, div. A, title XIV, §1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102-190, div. A, title X, §1061(a)(2), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 108-136, div. A, title VIII, §841(a), (b)(1), Nov. 24, 2003, 117 Stat. 1552.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101-165, title IX, §9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101-510, §1481(b)(3).

AMENDMENTS

2003—Pub. L. 108-136, §841(b)(1), substituted “Authority to procure personal services” for “Experts and consultants: authority to procure services of” in section catchline.

Subsec. (d). Pub. L. 108-136, §841(a), added subsec. (d).

1991—Pub. L. 102-190 inserted “of” after “services” in section catchline.

**§ 129c. Medical personnel: limitations on reductions**

(a) LIMITATION ON REDUCTION.—For any fiscal year, the Secretary of Defense may not make a reduction in the number of medical personnel of the Department of Defense described in subsection (b) unless the Secretary makes a certifi-